

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

HONORABLE BERNARD A. FRIEDMAN

v.

No. 22-11120

FINANCIAL EDUCATION SERVICES,  
INC., UNITED WEALTH SERVICES,  
INC., VR-TECH, LLC, VR-TECH  
MGT, LLC, CM RENT, INC., YOUTH  
FINANCIAL LITERACY FOUNDATION,  
PARIMAL M. NAIK, MICHAEL  
TOLOFF, CHRISTOPHER TOLOFF AND  
GERALD THOMPSON,

Defendants.

HEARING ON MOTION FOR PRELIMINARY INJUNCTION  
Thursday, June 30, 2022

- - -

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ALSO PRESENT:

Patrick A. Miles, Jr. - Receiver  
Anthony C. Sallah  
David Hall

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**E X H I B I T S**

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\*\*\*None Marked, Offered or Received\*\*\*

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Detroit, Michigan

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11:08 a.m.

- - -

**THE CLERK:** The United States District Court for the Eastern District of Michigan is now in session. The Honorable Bernard A. Friedman presiding.

**THE COURT:** Thank you. You may be seated.

Okay. Excuse my attire. This afternoon -- we have this case in the morning and we have only one other case that we're doing by Zoom. It's a case that we have in New York, so when we're through with this case, we're going to take my interns as well as my junior law clerk on a walking tour of Detroit because they have not had one yet. We didn't realize at the time that it was going to be so hot out so we may have to divert to a little -- but some of the history of Detroit that they don't know, I thought it would be interesting to do today. And Detroit's a very interesting city and has lots of quirks.

Anyhow, it's good to see everybody. And this is the matter of the Federal Trade Commission versus Financial Education Services, et al., Case No. 22-11120.

May we have appearances, please, starting with the Government plaintiff.

**MR. ASHE:** Gregory Ashe for the Federal Trade Commission.

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1           **THE COURT:** Okay. One more time.

2           **MR. ASHE:** Gregory Ashe for the Federal Trade  
3 Commission.

4           **THE COURT:** Okay. Great. And?

5           **MS. HEALD:** And Julia Heald from the Federal Trade  
6 Commission.

7           **THE COURT:** Okay. Thank you very much.

8           And for the defense, first starting with Financial  
9 Education Services and any other ones that you may represent.

10          **MR. EPSTEIN:** Good morning, your Honor.

11          **THE COURT:** Morning.

12          **MR. EPSTEIN:** Richard Epstein, and with me is Matthew  
13 Rapkowski for the defendants, Financial Education Services,  
14 United Wealth Services, VR-Tech, LLC, Youth Financial Literacy  
15 Foundation and Parimal Naik.

16          **THE COURT:** Thank you. And sitting next to  
17 co-counsel, just so I have --

18          **MR. EPSTEIN:** Matthew Rapkowski.

19          **THE COURT:** And right next-door to him.

20          **MR. MORGAN:** Thank you, your Honor. Kerry Morgan  
21 appearing on behalf of defendant Gerald Thompson only, your  
22 Honor.

23          **THE COURT:** Good. The reason I'm kind of going in  
24 order is when we're going through, I'd know who's speaking and  
25 who's representing who. Thank you.

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1 Counsel?

2 **MS. MESSNER:** Thank you, your Honor. Lisa Messner  
3 appearing on behalf of individual defendants Christopher and  
4 Michael Toloff, on behalf of CM Rent, Inc., and on behalf of  
5 VR-Tech MGT, LLC.

6 **THE COURT:** Thank you.

7 Counsel?

8 **MR. FISH:** Morning, your Honor.

9 **THE COURT:** Morning.

10 **MR. FISH:** George Fish on behalf of Financial  
11 Education Services, Inc., United Wealth Services, Inc, VR-Tech,  
12 LLC, Youth Financial Literacy Foundation and Parimal Naik. I'm  
13 local counsel.

14 **THE COURT:** Nice to see you.

15 Counsel?

16 **MS. MAC MURRAY:** Good morning, your Honor. I'm  
17 counsel with Lisa Messner for the same defendants, Michael and  
18 Christopher Toloff, VR-Tech MGT, LLC, as well as CM Rent.

19 **THE REPORTER:** Could I get your name?

20 **MS. MAC MURRAY:** Helen Mac Murray.

21 **THE REPORTER:** Thank you.

22 **MR. WARREN:** Nice to see you, your Honor.

23 **THE COURT:** Nice to see you.

24 **MR. WARREN:** David Warren on behalf of Michael  
25 Toloff, Christopher Toloff, VR-Tech Management and CM Rent.

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1 I'm local counsel.

2           **THE COURT:** Thank you. Just so you know, I'm glad we  
3 have local counsel here. It's always nice to have local  
4 counsel; however, you're always Welcome to attend. From my  
5 experience sometimes that's all they're really doing is  
6 attending, and that's good, and that's what our rule requires.  
7 But in the future, if they -- if there's no reason to have them  
8 here, they may be excused, depending on each client and how  
9 each client feels about having local counsel present in the  
10 courtroom. I don't require your presence in the courtroom and  
11 -- but it's really up to the attorneys. I don't want to -- I  
12 don't want to interfere with anybody's practice or with the  
13 case at all. So all welcome. I see we have a lot of folks in  
14 the audience. Welcome, also.

15           We have a few matters up today. We have -- I suspect the  
16 most important one is whether or not we are going to continue  
17 the TRO to a preliminary injunction. We just received some --  
18 as to the defendant's, certain defendant's requests for limited  
19 modification of the order, and those just came in two days ago,  
20 so I think that's what we have.

21           Starting with the plaintiff, is there anything else that  
22 we have before the Court that I have not indicated?

23           **MR. ASHE:** I think that's all, your Honor.

24           Also would just say, not on behalf of the Federal Trade  
25 Commission, but the court-appointed receiver and his counsel

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1 are also here.

2 **THE COURT:** Good.

3 Thank you. Where is the receiver?

4 Good. Tell us your name again.

5 **MR. MILES:** Your Honor, this is Patrick Miles, Jr.

6 I'm the court-appointed receiver.

7 **THE COURT:** Good. And with you?

8 **MR. HALL:** I'm David Hall.

9 **MR. LEARY:** Michael Leary (phonetic) of Riveron  
10 (phonetic), financial advisor to the receiver.

11 **THE COURT:** And at the end?

12 **MR. SALLAH:** Anthony Sallah, your Honor, counsel for  
13 the receiver.

14 **THE COURT:** Thank you. Okay. Okay. I read your  
15 report last night. I assume that each side has received the  
16 receiver's report.

17 Plaintiff, have you received it?

18 **MR. ASHE:** We have, your Honor.

19 **THE COURT:** Has each defendant received it?

20 **MR. EPSTEIN:** We have, your Honor.

21 **MS. MAC MURRAY:** Yes.

22 **THE COURT:** Okay. Good. I assumed you all did.

23 **MR. EPSTEIN:** Your Honor, there is one other  
24 procedural matter for which I believe there is no dispute. We  
25 filed a motion to seal certain of the exhibits to the

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1 opposition memorandum that was filed on behalf of our clients  
2 because it contained personal financial information concerning  
3 the customers of several of the defendant companies.

4 **THE COURT:** Is there any objection?

5 **MR. ASHE:** We have no objection to that.

6 **THE COURT:** I did not see that motion, but obviously  
7 if there's no objection, it makes some sense to me that it  
8 should be sealed, unless counsel has an objection.

9 **MS. MAC MURRAY:** I do not, but there was actually two  
10 motions to seal before you. One is with regards to the  
11 obligation of the trust.

12 **MR. EPSTEIN:** As I understand, your Honor --

13 **THE COURT:** Wait. Counsel didn't finish.

14 **MS. MAC MURRAY:** Thank you, your honor.

15 It's to seal the trust, the Gayle Toloff Revocable Trust,  
16 and there was no opposition by the FTC.

17 **MR. ASHE:** We had no objections.

18 **THE COURT:** Okay. Both motions to seal will be  
19 granted and will be sealed until further order of the Court  
20 because down the line we may have to unseal them, but since  
21 there's no opposition, we'll seal it until further order of the  
22 court.

23 **MS. MAC MURRAY:** Thank you.

24 **MR. EPSTEIN:** For purposes of the Court's review, the  
25 CM/ECF filings that were made were redacted pending a motion to

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1 seal. Accompanying the motion to seal, which was filed,  
2 itself, in a sort of sealed --

3 **THE COURT:** Right.

4 **MR. EPSTEIN:** -- fashion, the unredacted versions are  
5 there, so for the benefit of the Court, those are the ones that  
6 need to be substituted for --

7 **THE COURT:** Yes.

8 **MR. EPSTEIN:** -- for the Court's review of the  
9 documents.

10 **THE COURT:** Great. Good.

11 Okay. Any other housekeeping matters?

12 Okay. So I think this is the Government's request to  
13 extend the -- or convert the TRO, so you may go first.

14 You may use the podium. It's funny being back in court,  
15 we haven't been here in so long, and the time we were, we had  
16 glass everywhere?

17 **MR. EPSTEIN:** Before we get started, would -- is the  
18 Court's preference to use the podium or may I work from --

19 **THE COURT:** You may work from there, absolutely.  
20 It's not my preference, but I just wanted to make sure that it  
21 was available, because for so long it has not been available  
22 and so the --

23 **MR. EPSTEIN:** If I could take 30 seconds.

24 I had my first hearing in person last week where I live in  
25 Fort Lauderdale at -- in probably 16, 17, months, 18 months,

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1 and we were all there in person, the judge, the opposing  
2 counsel, all the lawyers that were involved, some other  
3 interested persons, everybody except the court reporter. The  
4 court reporter was going to attend by Zoom. Okay? This was  
5 last Tuesday. I don't know if anyone remembers, Zoom had  
6 outages last Tuesday, so we couldn't connect her, so all of  
7 this planning, all of these people showing up for the first  
8 time in a year and a half, hearing couldn't go forward because  
9 we couldn't get a court reporter, and, of course, there's no  
10 court reporters wondering around the courthouse.

11 **THE COURT:** Not anymore.

12 **MR. EPSTEIN:** Not anymore, you know, so -- we're  
13 still not there yet.

14 **THE COURT:** There's still a lot of kinks to get out,  
15 and one of them is our sound system. Our sound system used to  
16 be great, it was the best one in the courthouse, and now -- we  
17 haven't had many in-court experiences, but now for some reason  
18 it's not working the way it should. We'll get them all out one  
19 of these days, but it is very nice to be back in court. I'm  
20 sure most of you feel the same way. And the first couple times  
21 we were in court we had glass, glass all over here, just like  
22 it is in the witness box. And in the jury box, we had a jury  
23 with glass all around them, you know. They were kind of like  
24 this, and we finally took it down and just forgot to take that  
25 one down. Hopefully COVID will slow down and we'll all be well

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1 and next year at this time it will be a long memory, that's  
2 all.

3 Counsel?

4 **MR. ASHE:** I was just going to -- you were mentioning  
5 your walking tour. I run and I got up extra early to run on  
6 the Detroit RiverWalk. It's quite spectacular.

7 **THE COURT:** It's great.

8 **MR. ASHE:** Going through some of those urban parks as  
9 you're running, I guess you're running north.

10 **THE COURT:** Oh, you went down to Davison cutoff.  
11 You're heading north, yeah, yeah.

12 **MR. ASHE:** Lovely trail.

13 **THE COURT:** I used to be a runner and we ran at noon  
14 for probably 20 years with my clerks and -- we ran all around  
15 Detroit. And I had one law clerk back then, and I said, look  
16 at this. And she'd say, I'm going to be part of this having --  
17 revival. And we went up to neighbors -- and I said no way.  
18 And this was 30 years ago. She was one of my first clerks.  
19 And we'd run every day and I'd say that. And it has really  
20 turned itself around. And every time I see her -- and she has  
21 been very much a part of it. She was a very active attorney;  
22 she was the U.S. Attorney for a while. She's teaching as a  
23 professor at Michigan now and so she had really -- it's  
24 unbelievable what's happened to her.

25 **MR. ASHE:** Yeah, it's great. I mean, it's a great

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1 way to see the city.

2 **THE COURT:** Yeah, you probably ran into Rachel.  
3 Where's Rachel? She ran about 7:00 this morning. You may have  
4 run into her.

5 **MR. EPSTEIN:** Your Honor, we're not hearing Mr. Ashe  
6 particularly well. I don't know, maybe he needs to get closer  
7 to the mic.

8 **MR. ASHE:** Can you hear me now? I apologize.

9 **THE COURT:** No problem. If you can't hear anybody,  
10 including the people in the audience, raise your hands.  
11 Everybody's got to hear.

12 Okay. You may proceed.

13 **MR. ASHE:** Okay. May it please the Court, your  
14 Honor, Gregory Ashe for the Federal Trade Commission. As you  
15 know, we're here on the FTC's motion to convert the temporary  
16 restraining order that was entered in May into a preliminary  
17 injunction.

18 The defendants are masters at elevating form over  
19 substance, but the law looks to substance. The FTC has  
20 presented substantial evidence, both in its initial filing and  
21 in its supplemental briefing, which is corroborated by the  
22 receiver's preliminary report findings that the defendants  
23 first violated -- well, first -- the defendant's credit repair  
24 and investment opportunity scheme violated Section 5 of the FTC  
25 Act, the Credit Repair Organizations Act, also known as CROA,

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1 and the Federal Trade Commission's Telemarketing Sales Rule.

2 In particular, the evidence has demonstrated that the FTC  
3 is likely to succeed on the merits in showing that the  
4 defendants, one, misrepresented the efficacy of the credit  
5 repair services; two, charged prohibited advance fees; three,  
6 failed to make critical and required CROA mandated disclosures;  
7 four, misrepresented the amount of income that their agents  
8 could earn by selling the opportunity; five, their investment  
9 opportunity was, in fact, an illegal pyramid scheme; and, six,  
10 that they provided the means and instrumentalities by providing  
11 marketing materials so that others could commit deceptive  
12 practices. Second, the evidence shows that the corporate  
13 defendants operated the scheme as a common enterprise, a fact  
14 which is not substantively disputed in the various opposition  
15 briefs; and, finally, that the individual defendants have the  
16 requisite degree of control and knowledge as laid forth in  
17 Sixth Circuit case law to make them liable for injunctive and  
18 monetary relief.

19 Accordingly, we believe that the entry of the preliminary  
20 injunction is appropriate, including continuing the asset  
21 freeze and of the receivership. And the FTC's legal arguments  
22 in the factual basis are presented in great detail in our TRO  
23 memo and the supplemental filing that we filed last night, so  
24 we're really here to answer questions that the Court may have  
25 to aid in its determination that the preliminary injunction

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1 should issue.

2 We also do recognize that we filed a supplemental brief  
3 late last night.

4 **THE COURT:** I have it right here. I skimmed it.

5 **MR. ASHE:** I can highlight some of the key points,  
6 that is if the Court finds it helpful, otherwise we really --  
7 we're here to serve as an aide to the Court in answering what  
8 questions that the Court may have.

9 **THE COURT:** I appreciate that. I have read  
10 everything I could find, except the motion's seal, I guess, you  
11 know, and I appreciate that.

12 At this point I'd like to hear from the other side and I  
13 may have some questions.

14 **MR. ASHE:** Thank you, your Honor.

15 **THE COURT:** Thank you.

16 Who's going to go first?

17 **MR. EPSTEIN:** I think I'm the first one in the  
18 barrel, your Honor, thank you.

19 **THE COURT:** Good.

20 **MR. EPSTEIN:** I do intend to speak much longer and  
21 anticipate some of your questions and hopefully answer them  
22 even before you've had a chance to ask them.

23 **THE COURT:** That's fine. I'm not limiting anybody, I  
24 just wanted to let you know I've read it, and please highlight  
25 those things that you believe should be highlighted. I have no

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1 problem with that.

2 **MR. EPSTEIN:** And, your Honor, if I may, I'm not sure  
3 I heard you correctly. Did you have an opportunity to read the  
4 reply memorandum that the Commission filed?

5 **THE COURT:** I did not read it, I skimmed it.

6 **MR. EPSTEIN:** Okay.

7 **THE COURT:** Just came out. My clerk just handed it  
8 to me this morning.

9 **MR. EPSTEIN:** Very good. I have no problem with  
10 that. Obviously, all of us were doing stuff that was probably  
11 not conducive to being the most effective advocates today in  
12 order to get caught up on all of that stuff.

13 I feel a different theme is -- is appropriate here.  
14 Mr. Ashe has characterized our collective position over here  
15 and clients and parties as being masters of form over  
16 substance. Well, first of all, I don't think any of us will  
17 ever disagree that in the law, form is important, but here's  
18 the counterpoint I'd like to make. I think the real theme here  
19 is that the Federal Trade Commission is a master of ipse dixit.  
20 They have presented a narrative that they say exists but is  
21 belied by the record, is simply not supported by the record,  
22 and most importantly is actually not even supported by the  
23 receiver that you appointed early on in this case.

24 The receiver's report, read carefully, says very different  
25 things, sends very different messages than corroborating the

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1 notion that a company or a series of companies that have been  
2 actively doing business for nearly 20 years, that have  
3 serviced -- well, I did the math -- just since 2015, have  
4 enrolled 622,908 customers.

5 **THE COURT:** Where are you getting the math?

6 **MR. EPSTEIN:** Well, unfortunately, I didn't know that  
7 I needed to get 2015 through 2018 until last night about  
8 11:00 when I got their brief. The 2019, '20 and '21 numbers  
9 are in everybody's papers. They're in the receiver's report.

10 **THE COURT:** Okay.

11 **MR. EPSTEIN:** They're in our report. So in 2019, '20  
12 and '21, the last three years which would have at least fit  
13 within the statute of limitations in Section 19, there's  
14 roughly 420,000 or so customers. There are -- I have this  
15 elsewhere -- roughly about 160,000, 170,000 agents, discrete  
16 people that these companies have serviced, so to say in  
17 broad-sweeping terms that this is widespread fraud, that this  
18 is a pyramid scheme, without taking into account the actual  
19 data that exists that could have allowed for an appropriate  
20 evaluation of the direct marketing plan, there simply is not a  
21 proper foundation to continue any sort of injunctive relief  
22 against any of the corporate parties in this action. And, of  
23 course, if there's no immediate relief, interim or preliminary  
24 relief as to the corporate defendants, then, of course, the  
25 relief as to the individuals would necessarily fall because its

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1 derivative.

2       So let me deconstruct that a little bit if we could.  
3 Their argument of widespread fraud in connection with the  
4 operation of the multilevel marketing plan is based upon their  
5 claim of misrepresentations regarding earning potential and  
6 then a declaration without meaningful support that it's a  
7 pyramid scheme. Well, as I'm sure the Court has recognized  
8 from the cases that have been already cited in the moving  
9 papers in this case, there is no difference in form between a  
10 pyramid scheme and a multilevel marketing plan. They are  
11 exactly the same form of organization. It's how it's used.  
12 It's how it operates that's important. And what is missing  
13 from the Commission's submissions? Why is it that this is a  
14 case of ipse dixit? There is no operational data, none, that  
15 concerns any of these companies that is figures in their  
16 assertion that it's a pyramid scheme or in the expert report of  
17 Dr. David Givens, who, let's just be clear, is employed by the  
18 Federal Trade Commission, so it's not exactly hard to see  
19 exactly what his opinion is going to be. You don't generally  
20 formulate opinions, you know, that offend your master if you  
21 intend to keep your job.

22       Nonetheless, I will give credit to Dr. Givens. He uses 40  
23 some odd pages in as creative a manner as I can imagine, given  
24 that he has absolutely no data. He has no operational data,  
25 and the conclusion that one has to draw, that the Court has to

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1 be convinced of here that this is a pyramid scheme, is that it  
2 emphasizes the recruitment of agents over the sale of the  
3 product. That, if anything, is sort of the baseline element of  
4 a pyramid scheme: Recruitment for the business opportunity  
5 versus sale of the product.

6 One would seemingly want to know, how much revenue was  
7 generated by the sale of the product? How much revenue was  
8 generated by the sale of the business opportunity? They never  
9 asked. They never got it, because they didn't ask.

10 Based on the declarations that we have seen here -- and  
11 I'll get to those in a couple of minutes -- based on the  
12 declarations, they've been conducting an investigation of this  
13 company since at least 2020, if not earlier. It's 2 1/2 years  
14 now. Never sent out a CID to the company. Never sought  
15 operational data. They did get lots and lots and lots and lots  
16 and lots and lots and lots of bank records. But the bank  
17 records only tells them money came in and money went out; it  
18 doesn't tell them where that money came from. It doesn't tell  
19 them the source of the money. It doesn't tell them whether  
20 this is from customers buying the product, which would -- which  
21 would suggest/indicate that this is a legitimate marketing --  
22 multilevel marketing plan versus money coming from the sale of  
23 the business opportunity, which is one element of a  
24 determination it's a pyramid scheme.

25 Judge, it just isn't there. The report comes to the

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1 conclusion it's a pyramid scheme without knowing what the  
2 actual data would reveal on the central element in what a  
3 pyramid scheme is. They dance around while looking at the  
4 compensation arrangement, which everybody seemingly agrees is  
5 complicated, but then if all you're starting with is the  
6 contract and a schedule of how the agents get paid for selling  
7 the product, how they get paid, if at all for recruiting agents  
8 without knowing the success of each of those endeavors, you  
9 can't tell what the balance is, because it's not a fixed  
10 amount.

11 As Dr. Jovanovic points out, our expert rebuttal to  
12 Dr. Givens, there is no set standard. There is no bright line  
13 that anyone has drawn. The cases haven't drawn, and,  
14 importantly, the Federal Trade Commission has not drawn.

15 I want to be clear about this because this is a legal  
16 issue that goes to other parts of our argument. There is no  
17 rule implicated in a Section 5 case attacking a multilevel  
18 marketing plan. There is no rule. It is based on  
19 Section 5(a). Fine, that's not a problem. They have every  
20 right to bring a claim based on 5(a), and they have two ways of  
21 bringing it, under Section 13(b) or under Section 19(b). So --  
22 which I'll, again, get to in a minute because that is a very  
23 important part of our argument.

24 What do we know about the multilevel marketing plan, how  
25 it operates? The only information -- I don't want to use the

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1 word "evidence" -- the only information you have before you are  
2 15 declarations from actual customers of the corporate  
3 defendants. These are the first-party declarations, which I  
4 will observe. We appreciate the quick turnaround on the order  
5 on the motion to strike the other declaration I'll mention in a  
6 minute. We didn't move to strike those declarations because  
7 those are appropriately used. You know, they are first-party  
8 declarations. They were the actual declarant, you know,  
9 signing a statement of what they actually declared. There are  
10 15 of those. Only one of them relates to conduct that actually  
11 occurred into 2021. All the other ones relate to conduct that  
12 occurred between 2000, as far back as '16, through 2020, so  
13 most of them are, if you will, ancient history.

14 There is another declaration, the one that we moved to  
15 strike, Elena Hoffman. She recites her recollection of  
16 interviews that she conducted sometimes a year, two years ago  
17 from people who had filed complaints typically with the Better  
18 Business Bureau. There are 11 of those to begin with, and a  
19 12th arrived last night. I don't have it up in front of me,  
20 but I thought that the beginning of that recitation of that  
21 declaration -- what was the guy's name? Kendrick? The one  
22 from last night?

23 **THE COURT:** I haven't read the report.

24 **MR. EPSTEIN:** Whatever. Ms. Hoffman starts out her  
25 written statement by --

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1           **THE COURT:** Fuller.

2           **MR. EPSTEIN:** -- by saying -- by reciting that -- the  
3 husband is speaking, if I remember correctly. I can bring it  
4 up. I apologize for the imprecision -- husband is telling her  
5 in 2016 or '17 or 2017 and '18, my wife told me this.

6           So this is representative of the 11 other so-called  
7 witnesses that Ms. Hoffman presents. This is -- Ms. Hoffman  
8 talks to a man who is telling her about what his wife told him  
9 as long ago as five or six years. Now, how reliable can that  
10 be? How trustworthy can that be? And that is the, you know,  
11 the sort of the benchmark that we asked the Court to apply to  
12 at least the 11 other statements that Ms. Hoffman relates to  
13 the Court. This is her words, her recollection of what she was  
14 told by others, and in the main, almost every one of those  
15 statements said Jane told John told George who told me, and  
16 then that person told Ms. Hoffman, double, triple, quadruple  
17 hearsay. Yes, I understand, your Honor, and will not argue the  
18 point that it goes to the weight, it goes to the reliability,  
19 but there is a limit. There ought to be a line that is drawn,  
20 and this is beyond that line.

21           Those -- regardless of what they say, they really ought to  
22 be ignored because they cannot be relied on, and suggesting  
23 that they have the trustworthiness of residual hearsay under  
24 807 is, in a word, laughable. I mean, I've litigated that  
25 issue extensively, and believe me, I can't get sworn testimony

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1 under oath admitted under the residual hearsay exception, much  
2 less this kind of double, triple and quadruple hearsay.

3 So I think our first point is there simply isn't a factual  
4 basis for continuing the preliminary injunction, because in  
5 order to continue the preliminary injunction, you're going to  
6 have to make a finding, and in particular with respect to the  
7 Credit Repair Organizations Act, that the defendants violated  
8 it, not that there is the potential of producing evidence that  
9 they violated, but they did violate it, because of the way CROA  
10 works, because of the issue with respect to CROA, which I'll  
11 turn to now.

12 The Federal Trade Commission has described this -- these  
13 companies as a credit repair scam. What they ignore is, well,  
14 basically, facts, facts that credit repair was one of one  
15 products that were sold to the customers, that there were six  
16 additional products that were sold to the customers, all of  
17 which products had utilization, all of which products had  
18 value. Was the lead product credit repair? Fine, yes, it was.  
19 Was much of the advertising geared toward that? In the main,  
20 it was, because it's really the starting point for the rest of  
21 the package. The rest of the bundle of services all relates to  
22 allowing the user to develop a better credit life, and that's  
23 what it was designed to do, education, other kinds of tools  
24 that would allow for not only the improvement of their credit  
25 standing through the credit repair, but also the development of

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1 better habits and better credit-related skills. And we, I  
2 think, supported that more than adequately with the 16  
3 declarations that we submitted from customers who had quite a  
4 different story to tell about how the YFL and FES products  
5 improved their lives, changed their lives in many instances.  
6 There's a couple that I would just direct your attention to as  
7 being, in particular, I think, not only moving stories, but  
8 representative of what has got to be a substantial population  
9 here.

10 Marlene Reyes, which is docket entry 51-13, Karaunda Hurt,  
11 H-u-r-t, docket entry 51-14, Robert Rodriguez, 51-15, Andrea  
12 McKeithern, 51-18, and Jennifer Stamm, 51-19, what they say is  
13 the counterpoint to what the FTC portrays their declarations as  
14 saying, but we know they do not, and we point this out  
15 repeatedly.

16 The FTC on the one hand presents at least two people who  
17 complain that the credit repair product didn't work. One of  
18 them stayed in the program for six weeks, the other one for two  
19 months. Well, I mean, I don't often use colloquialisms --  
20 actually, I do -- but, duh. This is a program that takes time,  
21 and staying in it six weeks or two months is never going to  
22 achieve those results, and that was never -- they were never  
23 misled about that.

24 The lead-off declaration they have, person never bought  
25 the product. Never bought the product. He came to the -- his



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1 own unique, individualized conclusion that this was perhaps a  
2 scam, maybe, but he never bought the product. How does that  
3 support any relief at all? There are plenty of people who  
4 aren't going to buy this product, but what we do know is that  
5 lots of people have.

6 Now, on the credit repair issue there is a legal issue  
7 that the Court needs to confront, and it creates, I think,  
8 the -- a basis for -- a second basis for denying the  
9 preliminary injunction here. YFL, the seller of the credit  
10 repair product and the entity that would be considered to be a  
11 credit repair organization under the Credit Repair  
12 Organizations Act is a Michigan not-for-profit corporation and  
13 it -- that has been given 501(c)(3) tax-free or tax-exempt  
14 status by the IRS. That is a fact. No one is disputing that.  
15 What is being disputed is not what it is, what is being  
16 disputed is how it operates, and the question that the IR --  
17 that the Commission has raised is not that it's a  
18 not-for-profit; it is a not-for-profit. I don't think they're  
19 disputing that. Not that the IRS has given it 501(c)(3)  
20 status; I don't think they dispute that, but whether it is, in  
21 fact, operating in a manner that justifies the tax exempt  
22 status that is bestowed upon it by virtue of the IRS's  
23 determination, which, by the way, your Honor, occurred in  
24 December of 2003. It's been a long time since this company's  
25 been a 501(c)(3), and it is, at least from the standpoint of

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1 its relationship with the Internal Revenue Service, it has done  
2 all of the things that are appropriate.

3 **THE COURT:** I think their position is not that, I  
4 think they're position is how it is being used --

5 **MR. EPSTEIN:** Yes, exactly, right.

6 **THE COURT:** -- opposed to its status and so forth.  
7 It's the use of it and its relationship with the other  
8 entities, and that's, I think, what the whole subject of that  
9 is about. They don't believe --

10 **MR. EPSTEIN:** And that is -- I agree with you  
11 entirely, and that is exactly what I was about to say. It  
12 comes down to whether it is operating -- and I don't believe  
13 I'm misstating their position -- operating in a fashion that  
14 would entitle it to claim that tax exempt status. And there  
15 are a number of different tests that are applicable to that.

16 But here's the point: Assuming, which we will for  
17 purposes of today's hearing, that the Commission has standing  
18 to make that claim, we have argued that it really is up to the  
19 IRS, but for today's hearing alone without prejudice to our  
20 position, we'll accept that the Commission has the ability to  
21 challenge that aspect of it. I went through the other part to  
22 make sure that everyone knows all of those other statuses are  
23 etched in stone, if you will, so this is operational. This is,  
24 again, data-driven, which you do not have.

25 In order for you to decide if the business conducted, if  
  
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1 the activities conducted by YFL fit within the framework of a  
2 tax-except entity, you need to know everything it does.

3 **THE COURT:** Well, I'm not -- first of all, you keep  
4 saying I have to decide. I can't decide. I'm not the ultimate  
5 decider of the facts here. My -- what I have to take into  
6 consideration are not necessarily definitive positions, No. 1,  
7 but more importantly, I think they're position, from the way I  
8 read it, is that even if they were not a nonprofit, the way it  
9 was being used, the way it was being used as a tool for the  
10 other -- the other entities, that's -- I think that's their  
11 main argument, if I'm not -- it could be the nonprofit, but I  
12 don't think that that's their --

13 **MR. EPSTEIN:** No, they -- well, they are definitely  
14 challenging --

15 **THE COURT:** Absolutely.

16 **MR. EPSTEIN:** -- the nonprofit status. They have to.

17 **THE COURT:** Because that changes the flow of their  
18 ability to do certain things if they're nonprofit.

19 **MR. EPSTEIN:** Well, it actually changes the law  
20 that's applicable, because it's --

21 **THE COURT:** That's true.

22 **MR. EPSTEIN:** If it is a not-for-profit tax-exempt  
23 entity under 501(c)(3) --

24 **THE COURT:** Right.

25 **MR. EPSTEIN:** -- then it is not and cannot be a

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1 credit repair organization; and if it is not and cannot be a  
2 credit repair organization, then CROA does not apply to it, and  
3 that means that the first three of the so-called violations  
4 that prompted this case, the efficacy of the credit repair  
5 product, the advance fees and the disclosures, the CROA  
6 disclosures, those would be inapplicable; that would not be a  
7 tool available to the Commission because YFL is not subject to  
8 CROA, and if CROA doesn't provide the framework for the  
9 enforcement action here, then many of the other things that  
10 they're asking for necessarily fail.

11 And here's why you -- I agree with you, your Honor,  
12 there's -- this is very factual. This is what lawsuits are  
13 made out of. This is what you go and you do discovery about  
14 and you go in and you do a, you know, a proctological  
15 examination of how the company operates and you present it to  
16 the Court and you say this is -- tilts on the other side of  
17 what a not-for-profit is supposed to do, but that's  
18 fact-driven, that's evidence-driven, that's data-driven, and  
19 you don't have any of that in front of you. Yet, if you do  
20 what the Commission is asking you to do, and that is continue  
21 the preliminary injunction, you are expressly finding that YFL  
22 is not exempt because there's no other way that you would have  
23 the authority to enter relief against it under CROA, and they  
24 are definitely asking for relief under CROA. So you -- the  
25 very act of doing what they're asking is a final determination

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1 of this case as it relates to YFL, because there's no way the  
2 injunction could ever have stood if CROA wasn't there.

3 So you have -- you know, so what we're basically  
4 suggesting is that this is a factual issue, and when there are  
5 material facts in dispute and there is not a clear path of  
6 undisputed facts that would suggest that the Commission, you  
7 know, has a likelihood of success on the merits, then the  
8 injunction cannot survive and it just becomes a case that the  
9 Commission is entitled to conduct all the discovery that they  
10 wish to do and present it to you in the ordinary course once  
11 the facts have been developed.

12 So asking for preliminary injunction essentially preempts  
13 the ability of YFL to defend itself, because it's already  
14 enjoined under a law that it ostensibly is exempt from, and you  
15 can't have it both ways.

16 **THE COURT:** And you also can't take them out. Say --  
17 because we have so many other entities that are connected. So  
18 assuming you're right, we can't take YFL out. Assuming I said,  
19 okay, we're going to extent it, but it won't apply to YFL. The  
20 whole thing falls apart, anyhow.

21 **MR. EPSTEIN:** It depends on what kind of relief  
22 you're considering giving, so that I think is a good segue --

23 **THE COURT:** They're asking for permanent injunctive  
24 relief similar to that which was temporary. And if I were to  
25 take YFL out, say, okay, you're right, they're a nonprofit and,

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1 therefore, they have no jurisdiction, it wouldn't make any  
2 difference because the whole thing is based upon everybody  
3 together.

4 **MR. EPSTEIN:** Not quite.

5 **THE COURT:** Where am I wrong?

6 **MR. EPSTEIN:** Because of the basis for the relief  
7 that they're seeking. Now we're getting into AMG Capital.

8 The Supreme Court, a year ago, April of 2021, determined  
9 that the Federal Trade Commission does not have the authority  
10 under Section 13(b) of the Federal Trade Commission Act to seek  
11 monetary relief. Why is that important here?

12 **THE COURT:** Yeah.

13 **MR. EPSTEIN:** Because it now creates a divide between  
14 the two types of relief that have already been granted in this  
15 case. You've entered the temporary restraining order that  
16 recites a variety of conduct-related injunctive directives,  
17 affirmative and negative. Certainly 13(b) authorizes that.  
18 It's not a problem. We're not arguing to the contrary. Court  
19 has the authority to enter that kind of TRO that governs  
20 conduct, but you also imposed an asset freeze and you appointed  
21 a receiver.

22 The purpose of the asset freeze, and I will quote from the  
23 order, itself. First in finding of fact I -- this is docket  
24 entry 10, page 5 of the TRO -- and, remember, I'm sure this  
25 order was presented to you by the Commission.

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1           **THE COURT:** I didn't draft it.

2           **MR. EPSTEIN:** Yeah. "This Court has authority to  
3 issue this order pursuant to Section 13(b) of the FTC Act,  
4 15 U.S.C. § 53(b); Federal Rule of Civil Procedure 65; and the  
5 All Writs Act, 28 U.S.C. § 1651."

6           That's fine. That's what you based your decision on  
7 because that's what the Federal Trade Commission told you they  
8 were basing their request on.

9           Note that there is no other cited authority in the body of  
10 the TRO to any other procedural or remedial basis for the  
11 issuance of this injunction. They've hung their hat on 13(b).

12           Then in Finding of Fact F, there is good cause to believe  
13 that immediate and irreparable harm to the Courts ability to  
14 grant effective final relief for consumers -- effective final  
15 relief for consumers, including rescission or reformation of  
16 contracts and the refund of money or return of property will  
17 occur from the sale transfer destruction or other disposition  
18 or concealment by defendants of their assets or records unless  
19 defendant are immediately restrained and enjoined by order of  
20 this Court.

21           So the order is --

22           **THE COURT:** What's wrong with that?

23           **MR. EPSTEIN:** There's nothing wrong with that, except  
24 that you're not authorized to -- you're authorized to issue an  
25 injunction that says, don't destroy your records. Okay?

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1 That's fine.

2 **THE COURT:** Okay.

3 **MR. EPSTEIN:** Okay? But the only basis cited in the  
4 order for the asset freeze, which is a by-product of this  
5 provision, the only basis cited in the order for the asset  
6 freeze is rescission or reformation of contracts and refund of  
7 monies or property. This is monetary relief. That is what the  
8 Supreme Court in AMG Capital said you cannot do as a judge,  
9 what the FTC cannot ask for.

10 **THE COURT:** Read it one more time, please.

11 **MR. EPSTEIN:** What?

12 **THE COURT:** Read it one more time. I don't think it  
13 says quite what you said.

14 **MR. EPSTEIN:** "There is good cause to believe that  
15 immediate and irreparable damage to the Court's ability to  
16 grant effective final relief for consumers, including  
17 rescission or reformation of contracts and the refund of money  
18 or return of property" --

19 **THE COURT:** Okay.

20 **MR. EPSTEIN:** -- "will occur."

21 That is monetary. That is the -- that is the consumer  
22 monetary relief.

23 The Supreme Court has drawn a very bright line between  
24 structural types of injunctive orders and orders that relate to  
25 monetary relief. Under 13(b), you can't enter a money judgment

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1 for restitution.

2           **THE COURT:** No, but I can protect the -- I can  
3 protect that money, which this injunctive relief does. I can't  
4 say you must pay it out or something of that nature, but I can  
5 protect it. If there's another lawsuit, they can -- they can,  
6 you know, do whatever they want with that money, or it may be  
7 released, I mean, but I'm not giving a monetary judgment, I'm  
8 just protecting.

9           **MR. EPSTEIN:** Well, but if you don't have the  
10 authority to give a monetary judgment, then what are you  
11 protecting it for? It's not got any use if there's not ever  
12 going to be a monetary judgment. You're just holding up their  
13 money in the absence of any use that the money could --

14           **THE COURT:** There may be a definite use for that  
15 money. If you read the receiver's report there's going to be,  
16 not a non- -- not a judgmental kind of judgment, kind of, but  
17 we don't know what's going on, so, I mean, I'm just giving  
18 you -- you know, I don't think that violates the Supreme Court.  
19 It may violate the Supreme Court if I were to distribute it or  
20 if I were to use it for something other than holding it to take  
21 a look in terms of what the receiver may need, where the --  
22 where everything stands, where it came from. I mean, there's a  
23 big dispute in this -- in the pleadings in here as to YFI [sic]  
24 in terms of, you know, how they were related and not related  
25 and so forth.

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1           Anyhow, anything else? Why don't you wrap it up because  
2           it's getting late.

3           **MR. EPSTEIN:** Your Honor, this is a really key point.

4           **THE COURT:** Okay.

5           **MR. EPSTEIN:** Because, remember, the asset freeze is  
6           the individuals. The asset freeze is the individuals, it's not  
7           the corporations. Rescission of contracts is the corporations.  
8           You've appointed a receiver over the corporations. The  
9           individuals can't give rescissory relief; they're not  
10          parties to the contract, so it doesn't apply to that. And  
11          any -- any other monetary relief for consumers, again, isn't a  
12          Section 13 issue. There is a very recent decision from the  
13          11th Circuit. There are no Sixth Circuit decisions on this,  
14          so, your Honor, respectfully, the 11th Circuit is essentially  
15          controlling law here.

16          I'm going to quote. It's Federal Trade Commission versus  
17          On Point Capital Partners cited at 17 F.4th 1066, 2021. This  
18          is the 11th Circuit speaking regarding this very issue. "As  
19          monetary relief is no longer available under 53(b)", that's  
20          Section 13(b) --

21          **THE COURT:** Right.

22          **MR. EPSTEIN:** -- "there is no need to preserve  
23          resources for a future judgment." Consequently, the imposition  
24          of an asset freeze or receivership premised solely on 53(b),  
25          not on facts, but on 53(b), which this one is --

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1           **THE COURT:** Not solely.

2           **MR. EPSTEIN:** -- is inappropriate.

3           **THE COURT:** This one is not solely?

4           **MR. EPSTEIN:** Yes, it is. There is no other basis  
5 that is cited in the order other than 13(b).

6           **THE COURT:** Okay.

7           **MR. EPSTEIN:** Now, the Commission may argue that  
8 19(b) gives them scope here, but 19(b) has huge flaws. First  
9 of all, it is very limited in its scope. It only applies for  
10 the violation of a rule or -- for the violation of a rule here.  
11 It could also apply for the violation of a cease and desist,  
12 but there is none, so it has to be a rule violation. And this  
13 now goes back to the CROA argument. We will acknowledge that  
14 CROA is typically read as if it were a rule, but, again, if  
15 there is a legitimate debate over whether CROA, applies here  
16 because of the not-for-profit 501(c)(3) status, then it also  
17 can't really be the basis for the kind of relief that they're  
18 seeking here, plus the approach to calculating it is quite  
19 difficult. They've got to show individual consumer relief --  
20 harm in order to get any kind of money judgment under 19(b).

21           **THE COURT:** Okay. We got to wrap it up. Give me  
22 your last, best argument.

23           **MR. EPSTEIN:** Okay. I would just also point out, in  
24 their reply brief, they cited to case Federal Trade Commission  
25 versus Noland, what we've referred to in our papers as

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1 Noland 2, as justifying this kind of relief under  
2 Section 19(b). What the FTC omits in their reference to this  
3 is really, really, really important, because it is the huge  
4 contradistinction between that case and this case.

5 In this case there's been no ruling on the facts, because  
6 you haven't been presented with the facts, so you've not  
7 determined the facts. In Noland, summary judgment on liability  
8 was entered against the defendants, so when they argued that  
9 AMG freed them of the asset freeze, then they were already  
10 facing a liability determination. That is the case that the  
11 FTC wants you to rely on, so if you rely on that and say it's  
12 applicable, you're making a finding of liability today on a  
13 preliminary injunction, which, I guess, goes without saying, is  
14 not proper, and we all recognize it's not proper.

15 **THE COURT:** We do? Who's all?

16 Okay. That's good.

17 Okay. Let me hear from anybody else, any of the other  
18 defendants wish to speak.

19 You can stay there or you can come to the podium,  
20 whichever makes you -- and give me your name, again, please.

21 **MS. MESSNER:** Good afternoon, I guess afternoon now,  
22 your Honor. I'm Lisa Messner. I'm going to make some remarks  
23 on behalf of my clients which are the individual defendants,  
24 Michael Toloff and Christopher Toloff, and on behalf of one of  
25 the corporate defendants, CM Rent, and I will, out of

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1 efficiency for the Court, not overlap any of my remarks with  
2 those of Mr. Epstein.

3 **THE COURT:** Thank you.

4 **MS. MESSNER:** So, specific to Christopher Toloff,  
5 there are a lot of allegations in the complaint and in the  
6 filings by the FTC that just have factual inaccuracies to the  
7 individual defendant, Christopher -- I'll just refer to him as  
8 Christopher. In the time that he worked there, he had kind of  
9 a couple of different titles, and I think the last one was  
10 chief financial officer. It was a title, and in reality, it  
11 was a total only. His job duties were really more in the  
12 nature of operating the finances of the company, paying  
13 vendors, reconciliating [sic] the books, administering payroll,  
14 things of that nature. He had no actual decision-making  
15 authority within the company. And I just want to highlight  
16 that we have briefed that. We've provided the case law to the  
17 Court in our briefs that talk about how that analysis on  
18 individual liability does not end with just the title. It does  
19 have to actually look to the -- to the job duties of the  
20 individual defendant.

21 And then I just wanted to briefly respond to the Court. I  
22 know you had indicated, your Honor, that you just had an  
23 opportunity to skim through the FTC's response last night, but  
24 they do cite --

25 **THE COURT:** No, this morning, but go on. They just

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1 handed it to me this morning.

2 Go on.

3 **MS. MESSNER:** This morning, right.

4 The FTC cites three cases in there to suggest that the  
5 title alone is determinative for the Court in terms of looking  
6 at individual liability. I would just note for the court that  
7 those three cases are FTC versus Ross, FTC versus EMA  
8 Nationwide, and FTC USA Financial, and in each of those  
9 instances, there's a very marked factual distinction between  
10 this case in that those corporate officers had authority to  
11 borrow funds on behalf of the companies. They had the  
12 authority to sign corporate resolutions on behalf of the  
13 companies. They had personally been involved with the actual  
14 creation of the product, services or advertisements that were  
15 alleged and found to have been violative of the Act, and so we  
16 would just highlight for the Court that the case is relied upon  
17 in the filing, the most recent filing by the FTC as to the  
18 individual defendant, Christopher Toloff, are distinguishable.

19 And you heard Mr. Epstein talk about how under  
20 Section 19 -- he explained the difference between 13 and 19 --  
21 in the event that the Court does rely on Section 19 in making  
22 any determinations as to the preliminary injunction specific as  
23 to the individual defendant Michael Toloff, that Section 19  
24 carries a three-year statute of limitations. The reason that  
25 that is significant as to the individual defendant, Michael, is

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1 that he actually retired and sold his interest in FES in May of  
2 2019. He was diagnosed with a long-term medical condition and  
3 that just became, you know, the reality for him, but given  
4 that, the three-year statute of limitations captures him for  
5 only about three months, four months' time period, and in that  
6 three- or four-month time period within the FTC submissions,  
7 there's no quantification of what damage might actually -- what  
8 consumer harm might actually exist during that time.

9 And then, lastly, as to our corporate defendant, CM Rent,  
10 this is a company that is somewhat of a stand-alone company  
11 from the other entities. It is based out of Colorado, and the  
12 company's objectives are to report rental income data to the  
13 credit reporting agencies, and in the FTC's original  
14 submissions, there is information that is submitted by the FTC  
15 that is the declaration of at least one witness is just  
16 demonstrably false. The declaration that was submitted by Lisa  
17 Willis of Equifax contains the statement that they've never had  
18 a relationship with CM Rent and that they never took this  
19 rental reporting income as --from this furnishing, and that's  
20 not true. They signed a contract with CM Rent in 2021 that has  
21 been proffered to the Court as part of our filings, and you  
22 will see it within the evidence that we've presented.

23 Significantly, the FTC didn't even refute that in the  
24 filing that they submitted last year.

25 And the other two filings we would just highlight don't

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1 present to the Court credible evidence, and I'll just highlight  
2 briefly why that would be: First, a declaration was submitted  
3 by the FTC of Ethan Durham with FICO, and he essentially says  
4 rental history is not significant under the FICO scoring  
5 mechanism, is inconsistent with the statements within his own  
6 declaration to the point that every scoring program of FICO  
7 since 2014 has had rental history as a factor, and that  
8 35 percent of a person's FICO score under any scoring mechanism  
9 is based on payment history.

10 So we just would highlight those issues for the Court, and  
11 then, lastly, we would point out that, similarly, the FTC  
12 submitted a declaration from Marianne Litwa of TransUnion, and  
13 although she does not include this within her declaration,  
14 TransUnion has also contracted with CM Rent to receive the  
15 furnishing of the rental information.

16 And then, lastly, I would conclude as to CM Rent that your  
17 Honor has in front of him in the submissions, the declaration  
18 of Dr. Jovanovic in which he opines about many, many different  
19 things, but specific to CM Rent he discusses white paper and  
20 historical data to strongly suggest that rental income is an  
21 extremely important furnishing to the credit reporting  
22 agencies, particularly for persons who have traditionally been  
23 not having the same equal access to credit, and that would be  
24 people typically in a lower socioeconomic status that have  
25 limited access to credit and affordable housing, and all of



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1 that information is before your Honor in our submissions, and  
2 otherwise I will rest on my remarks and ask if you have any  
3 questions that I might answer for you.

4 **THE COURT:** No, I don't at this time. Thank you very  
5 much.

6 **MS. MESSNER:** Thank you so much.

7 **THE COURT:** Anyone else?

8 Please. And may I have your name one more time.

9 **MS. MAC MURRAY:** May it please the Court, my name is  
10 Helen Mac Murray, and I want to speak to the motion for limited  
11 modification of the TRO.

12 **THE COURT:** You know, yeah, I was going to do that  
13 separately.

14 **MS. MAC MURRAY:** Okay.

15 **THE COURT:** Because I have not -- it just came in,  
16 too, and I just looked at it very quickly, but it's an issue I  
17 want to talk about, but let's get our primary issue out of the  
18 way first and then intend to talk about that one.

19 **MS. MAC MURRAY:** That's fine. Thank you, your Honor.

20 **THE COURT:** Okay. Does the --  
21 Come on. It's okay.

22 **MR. MORGAN:** All right.

23 **THE COURT:** Your name again one more time.

24 **MR. MORGAN:** Kerry Morgan appearing on behalf of  
25 defendant Gerald Thompson who's in the courtroom today, your

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1 Honor.

2 **THE COURT:** Great. I always like the clients here  
3 because then they know what's going on, so --

4 **MR. MORGAN:** Well, he's a transactional guy so I had  
5 to kind of show him how to get through security and everything.

6 **THE COURT:** Right, the whole show.

7 **MR. MORGAN:** I had to say, don't stand up and say  
8 "That's not true" or something like that, so --

9 **THE COURT:** You have to show him how to practice law.  
10 That's what trial attorneys say, you got to tell the  
11 transactionals how to practice law.

12 **MR. MORGAN:** There you go.

13 **THE COURT:** Okay, Kerry.

14 **MR. MORGAN:** Your Honor, we filed a brief, Document  
15 No. 50, and said, I think, what we should have said. We also  
16 filed a supplemental declaration of Mr. Thompson last night,  
17 which underscores a few of the things I want to mention here  
18 today.

19 Mr. Thompson is in this suit essentially because he was  
20 the president of YFL, the non-profit, the 501(c)(3) exempt  
21 nonprofit, but what I think is not well appreciated is the fact  
22 that he's also an attorney. He's licensed in the state of  
23 Michigan. He's a P29003. I know you probably know where that  
24 fits into the hierarchy.

25 **THE COURT:** I'm P13221, so --

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1           **MR. MORGAN:** All right. So you got yours when they  
2 first started giving out Bar numbers.

3           **THE COURT:** I did.

4           **MR. MORGAN:** I'm not quite there. I'm in the 32000s,  
5 but he's been around. And being a transactional lawyer, he  
6 represents clients that do nonprofit, that do IRS tax  
7 exemption, bylaws, articles, contracts, the usual stuff you  
8 would always expect a competent transactional attorney to  
9 perform. And, in fact, he did perform those functions for some  
10 of the corporate defendants here, YFL and FES. And he  
11 originally billed for those through his law firm. He and his  
12 father were originally a law firm together, he practiced law  
13 before he passed away, and to have more of an administrative  
14 convenience, they set up a retainer agreement where  
15 Mr. Thompson would be paid monthly for providing legal  
16 services. The receiver, in his report at page 35, notes that  
17 Mr. Thompson is an attorney and does provide services, and I  
18 don't think that's generally disputed, but in the Government's  
19 case, they look upon Mr. Thompson's conduct in whatever he does  
20 is all under his president hat, not under his lawyer,  
21 arm's-length, providing legal services hat. And, of course, as  
22 an attorney, I would hope that the Court would see that the  
23 practice of law doesn't really come within the regulation of  
24 the FTC. I did review the supplemental brief filed by the  
25 Government, and they talk about Mr. Thompson on page 24 and

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1 they state, "Additional evidence supports the requested relief  
2 against Thompson and Christopher Toloff."

3 **THE COURT:** So what you're asking today is to exclude  
4 Mr. Thompson from any relief I may give or not give?

5 **MR. MORGAN:** I don't think he should be in this case,  
6 your Honor.

7 **THE COURT:** I don't know about in the case, I'm just  
8 talking about today the issue is whether or not we should --

9 **MR. MORGAN:** I would ask that --

10 **THE COURT:** You would say that you would like --  
11 based on his professional services and so forth, that he should  
12 be an excluded person from this particular, if I was to enter a  
13 preliminary injunction, I can't do anything about the case. Is  
14 that basically your bottom line?

15 **MR. MORGAN:** The scope of relief, yeah, the TRO and  
16 the preliminary injunction.

17 You didn't happen to see my notes before I got up here,  
18 did you?

19 **THE COURT:** No, I didn't, but I know that makes good  
20 sense. It's a good argument.

21 Let me look at the plaintiffs. You would have no  
22 objection to that as to him only as to the injunctive relief,  
23 would you?

24 **MR. ASHE:** Actually, we would respond that, you know,  
25 there is no attorney exception in Section 5.

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1           **THE COURT:** I'm not making that ruling, I'm making a  
2 ruling just based upon an attorney's relationship with the  
3 client, it's probably -- he didn't intend to be in part of  
4 this, and he still has to be part of the lawsuit, because I  
5 can't make a factual -- but I think it makes some sense just to  
6 exclude him from any relief that the Court may or may not give.

7           **MR. ASHE:** Obviously that's, you know, in the Court's  
8 discretion.

9           **THE COURT:** Good. If I decide to give some relief,  
10 I'm going to exclude him based upon his attorney-client. And  
11 he'll still be part of the case and I'm sure he'll file the  
12 appropriate motions and stuff.

13           **MR. MORGAN:** So, your Honor, if I --

14           **THE COURT:** You don't have to argue --

15           **MR. MORGAN:** You know, my years of practice tell me  
16 to sit down right now.

17           **THE COURT:** Yes, right. As they say, when you're  
18 winning, have a seat.

19           **MR. MORGAN:** I just wanted to let you know my client,  
20 you know, it's like, I'm doing my job, so --

21           **THE COURT:** No, no, I agree with you. You did a good  
22 job. You pointed out the things that I wanted to know about,  
23 and I have heard that argument in other kinds of cases, and I  
24 tend to say we're going to assume that he was acting in his  
25 attorney role. I suspect he was getting paid in his -- but

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1 that's not here nor there, and I don't think that excluding him  
2 has any bearing on anything at this point.

3 **MR. MORGAN:** And he was not even a paid -- he  
4 received no compensation.

5 **THE COURT:** Okay. You won. Your winning, so --

6 **MR. MORGAN:** Thank you, your Honor. I'll sit down  
7 and hopefully my client will pay me for all this.

8 **MR. EPSTEIN:** This is our only opportunity to talk to  
9 you. If I could get a couple more minutes, I wanted to finish  
10 the point on the statistics that I had started on you asked  
11 about, I didn't finish that, and I wanted just to point out a  
12 couple of things about the receiver's report as you go through  
13 that, because you're obviously going to place great weight on  
14 it.

15 **THE COURT:** Great weight.

16 **MR. EPSTEIN:** Okay. If you can just give me three,  
17 four minutes.

18 **THE COURT:** Go on. Three, four minutes.

19 **MR. EPSTEIN:** Now we had gone back -- the reason I  
20 come back to 2015 and came up with the numbers that I did,  
21 623,000 customers since 2015, is that yesterday the FTC filed a  
22 spreadsheet that showed their complaints since 2015, a total --

23 **THE COURT:** I have not seen it, but go on.

24 **MR. EPSTEIN:** Yeah, it's in there. That's why this  
25 is a pertinent observation.

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1           So they start January of 2015, they run it through January  
2 of 2022. They show 454 complaints during that time, so I asked  
3 the client, you know, we already have the numbers for '18, '19  
4 and -- strike that -- '19, '20 and '21, what are the other  
5 numbers? Turns out that during the period of time that the  
6 consumer sentinel report, that's their consumer complaint  
7 portal, provides the 454 reports, they had 62 -- 623,000  
8 customers enrolled during that period of time. The number of  
9 complaints that they are showing there -- now, it may not be  
10 the entire universe of complaints, but if it is to be given  
11 relevance. 454 complaints amounts to point -- I believe.  
12 Could be off a digit -- .007 percent, seven 1000ths of a  
13 percent of the customers. Could be seven 100ths, but I'm not  
14 real good with this calculator, so an infinitesimal number of  
15 complaints versus customers. If you add the agents to it, a  
16 discrete group, it's 881,000 discreet individuals, it drops  
17 done to .005 percent, five 1000ths of a percent. You're being  
18 asked to make a determination of a likelihood of success on the  
19 merits on a number of complaints -- this is the only evidence  
20 you have of any wrongdoing -- a number of complaints that  
21 doesn't even go to the left of the decimal point. So we're  
22 saying, this is -- you know, and, of course, the same thing  
23 could be said about ours. We put in 14 -- excuse me -- 16 that  
24 said wonderful things about the company. There's a lot of  
25 people out there that haven't said anything about the company.

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1 But all it's saying to you, Judge, is that you don't have  
2 enough to make any determination as to likelihood of success on  
3 the merits, because if you just balance our declarations  
4 against theirs, they cancel each other out and there's nothing.

5 Now, the second thing, be very careful about this  
6 receiver's report. I am going to ask the Court to not go to  
7 the end and see how the book ends, go on and see what the  
8 conclusion is, because --

9 **THE COURT:** I've already read it.

10 **MR. EPSTEIN:** -- in our view, the conclusion is  
11 completely disconnected from the body of the report.

12 At about a dozen places, the receiver talks about the  
13 procedures, the programs, the policies that are already in  
14 place. Talks about the Georgia consent agreement that was  
15 entered into in July of 2019. He says that the Georgia consent  
16 agreement, about it, he says the company has complied with it.  
17 They have done the things that the state of Georgia told them  
18 to do that they agreed to do. They've done those things.  
19 That's not a company that is permeated by widespread fraud,  
20 it's a company that follows the directions it's given by a  
21 regulator.

22 There's --

23 **THE COURT:** Okay. Two minutes.

24 **MR. EPSTEIN:** -- policies and practices -- here's the  
25 basic premise. The receiver has told you in this report



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1 there's an infrastructure in place, a good infrastructure, one  
2 that would be -- that would be capable of running a business  
3 legally -- not that it's not being run legally. So it's  
4 already there. This isn't one of these that there's nothing  
5 there. The entire infrastructure is in place. They even talk  
6 about, you know, the vetting of advertising. Didn't say that  
7 it's not being done, it says that there's not enough people  
8 doing it. So what does that tell you, your Honor? It tells  
9 you that if you have the infrastructure in place, you have the  
10 policies, you just need to staff it up. And there's plenty of  
11 ways to do that, and what that means is that the company gets  
12 to make that decision. The decision of how to implement the  
13 existing policies belongs to the company. The decision at the  
14 conclusion as to whether this can make a profit, that is a  
15 decision for the companies to make, not for a receiver or the  
16 Federal Trade Commission to make.

17 **THE COURT:** Okay.

18 **MR. EPSTEIN:** Thank you.

19 **THE COURT:** Commission have any rebuttals, any short  
20 rebuttal?

21 **MR. ASHE:** It'll be short, your Honor.

22 **THE COURT:** Thank you.

23 **MR. ASHE:** I would like to just start off, with  
24 respect to CM Rent and the declaration from Equifax, I guess we  
25 have a little egg on our face on that one. Equifax is a big

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1 company and I don't believe it was intentional on the part of  
2 Ms. Willis, who is a corporate officer, that they may have  
3 overlooked that, but, you know, I certainly apologize to the  
4 Court if that statement turned out to be inaccurate. I don't  
5 think it changes anything. It doesn't change, certainly, what  
6 the FICO declaration talks about, that even if the rent is  
7 being reported, it's only going to -- it's only a small part of  
8 what goes into the FICO score. You know, we certainly think,  
9 you know, reporting rent's important, and we're glad FICO is  
10 finally doing it. I think what -- something about the FICO  
11 scores. FICO 8 -- they have numbers -- FICO 8 and before, rent  
12 was not reported to it. Starting in FICO 9, it is. Most  
13 lenders still use FICO 8, but that's -- the main thing I wanted  
14 to say, and maybe the Court doesn't need to hear more on this,  
15 is two points, one on the nonprofit status, and the second on  
16 the AMG issue.

17 I think the defense seemed to conflate -- the First  
18 Circuit in Zimmerman versus Cambridge Credit Counseling says  
19 that the language of CROA, it's two parts, nonprofit and 508.  
20 You know, they've read that -- every district court, you know,  
21 that it's interpreted, said it's two parts: You have to be  
22 nonprofit and you have to be 501(c)(3) exempt. You know, for  
23 purposes of this position, we concede that, you know, it's up  
24 to the IRS to determine 501(c)(3) status, but the courts have  
25 long held that whether it operates as a non-property is an

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1 issue for the Court, and the record is clear that it is, and I  
2 think just -- I know we have in our brief, but I think it's  
3 worth repeating, even the defendants, you know, recognize that  
4 they're elevating, you know, form over substance. In February  
5 2022, Mr. Michael Toloff says, you know, "Knowing that a  
6 hundred percent of our agents market the credit product and  
7 most of our customers are using the credit product, can we get  
8 away with it. This only concerns us if the FTC or Protection  
9 Bureau ever hit us. Now they may never have and -- they never  
10 have and they never. Let's hope that is the case. States, not  
11 a problem. We can win that battle because they cannot dig that  
12 deep."

13 Later they said, "We're not going to mention anything  
14 about credit. The less they know, the better. That will fit  
15 well in case any regulators question it. To a regulator, all  
16 the money is still going to the nonprofit. This will be a  
17 hundred percent internal, no one on the outside will know."

18 In another email, "We can still move money back and forth  
19 intentionally without anyone knowing, but I just don't think  
20 any regulator will buy the nonprofit is doing the credit  
21 repair."

22 So, clearly, they even know that this is all one big  
23 operation that is subject to CROA.

24 Briefly on the AMG issue, just to clear it, because it is,  
25 I think, a little bit confusing. So, yes, the Supreme Court

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1 last year ruled that under 13(b) of the FTC Act, the FTC cannot  
2 seek money for violations of Section 5 of the FTC Act. The  
3 Supreme Court said nothing about our ability to seek money  
4 under Section 19, which is for violations of rules. So clear  
5 the TSR falls under that.

6 In the statute of CROA, Congress expressly states that for  
7 purposes of FTC enforcement, a violation of CROA is deemed a  
8 violation of a trade regulation rule. So, therefore,  
9 Section 19 allows us the ability to seek monetary relief for  
10 violations of CROA.

11 With respect to the issue at hand whether an asset freeze  
12 should be in play, the court in Noland, which the fact that it  
13 was summary judgment on liability had been issued is a  
14 distinction without a difference in the case. What the Court  
15 held, as long as the Commission has a nonfrivolous argument for  
16 monetary relief, which we do here, because this Court can enter  
17 monetary relief under Section 19; therefore, it is appropriate,  
18 as this Court, you know, pointed out earlier, to preserve  
19 assets, and Section 13(b) gives that authority to enter the  
20 injunction of the asset freeze to preserve the ability for  
21 Section 19 later on, because, as this Court pointed out, this  
22 is not a final ruling on the merits, this is just is there a  
23 likelihood of the success on the merits, and, you know, unless  
24 the Court has any further issues --

25 **THE COURT:** No, thank you.

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1           **MR. EPSTEIN:** Your Honor, if I may.

2           **THE COURT:** No.

3           **MR. EPSTEIN:** What I just heard from Mr. Ashe is that  
4 they're seeking an amendment, an effective amendment to the  
5 TRO.

6           **THE COURT:** It's okay. That's okay.

7           **MR. EPSTEIN:** It doesn't cite to Section 19, and he  
8 wants to support it on that basis. Is he moving to amend?

9           **THE COURT:** It doesn't make any difference. Okay.  
10 Have a seat, please.

11           **MR. ASHE:** One more point. Since we're at the  
12 conclusion of the issue of the preliminary injunction hearing,  
13 we know that the temporary restraining order, I believe, and  
14 correct me if I'm wrong, expires today, and I'm assuming the  
15 Court's going to take this under advisement, so we ask that the  
16 TRO be --

17           **THE COURT:** I'm not taking it under advisement, I'm  
18 going to rule in about --

19           **MR. ASHE:** Oh, well, never mind.

20           **THE COURT:** -- as soon as Mr. Epstein sits down.

21           Okay. Hold on one second. I have to first take my pill.

22           I'm sorry. That's how I know what time it is every day,  
23 it rings at 12:30.

24           Okay. This is a very unusual case for me because I  
25 can't -- can say that I've never had anything close and I've

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1 never had a FTC case before and I've done a lot of reading,  
2 that's for sure, because each side has done a lot of filing.  
3 I've looked at everything and I've thought about things. I've  
4 listened to the arguments on the defense side and also read  
5 everything that the plaintiffs have to say, and it's just  
6 interesting because I've learned a lot, and the receiver, I  
7 believe, did a fabulous job, also, in putting things together.

8 We know that injunctive relief is extraordinary relief.  
9 It's the kind of relief that the Court has to think about, the  
10 Court has to justify, the Court -- it's relief that should not  
11 be given until such time as there's adequate reason to do so.  
12 And then I started thinking about, especially listening to the  
13 argument today, what standard. You know, when I was putting  
14 this together in my mind, what standard do I use? Do I use by  
15 preponderance of the evidence? But I don't have any evidence  
16 so I can't use preponderance of the evidence, all I have are  
17 pleadings, and pleadings, as we all know, are not evidence. I  
18 have affidavits that are disputed, so what do I use as a  
19 factor?

20 Most cases that I've always had in terms of injunctive  
21 relief have been, you know, kind of cut and dry. A broker  
22 leaves their firm and the firm sues them because they violated  
23 their noncompete clause and they want an injunction for their  
24 book of business, those kind of injunctions. Or where  
25 there's -- they come in and there's a really [sic] safety

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1 hazard. This is one that is based upon a lot of statutory as  
2 well as case law as well as administrative law, and I think,  
3 whether it is a complicated case like this one or it is a  
4 simple case, I think that there's still four factors,  
5 injunctive relief. It doesn't make any difference what kind of  
6 case it is or how much money is involved or whether there's no  
7 money involved but there's other things involved, so I still  
8 use the four factors. And, again, using the four factors in  
9 this case and using a standard, something less than -- or I  
10 shouldn't say less, but some standard, you know, of putting it  
11 all together.

12 So I first look at the likelihood of success, and I, at  
13 this point I've heard -- I've read first and, of course, heard  
14 argument today of each side. I think I heard your opening  
15 statements today. And I don't think one side or the other has  
16 more of a likelihood of success than the other. I think it is  
17 a complicated case. I think there's lots of rules and  
18 regulations and things that are involved. And the other thing  
19 is, is that we have multiple entities, and that's why when  
20 counsel was arguing about the status of whether it's nonprofit  
21 or profit and the Government is saying that, you know, hey,  
22 they're facilitating this, no matter what it is, they're  
23 facilitating, basically, is what they're saying. So I don't  
24 think there's any more likelihood or non-likelihood for either  
25 side at this point. The irreparable harm is -- and, again,

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1 there's -- the plaintiff alleges irreparable harm to the  
2 community and to those persons that are involved and credits in  
3 seeking their credit scores to be higher so that they have an  
4 opportunity to be able to function in terms of loans or rents  
5 and so forth, but also we have -- so that's -- we have  
6 irreparable harm also to the defendants. They have a business  
7 and I've read the report of the receiver, and the receiver's  
8 bottom line is, he doesn't believe that it can be run at this  
9 point. But they have a -- they have a core there already, and  
10 so I think that there is going to be irreparable harm to both  
11 sides and I'm very concerned about both sides. I won't lie to  
12 you, I'm very, very concerned about the public and the  
13 allegations that are made by the plaintiffs in this matter, but  
14 if I were not to issue any extraordinary relief in this matter,  
15 I have another solution to that, and I would imagine that with  
16 all the allegations that are made in this lawsuit, that  
17 there's -- that everybody is going to be straight and forward  
18 because everybody would be looking at them, the plaintiffs as  
19 well as each defendant and so forth, and we all know what's  
20 happening.

21 So I think there is irreparable harm to both sides, very  
22 frankly, and I don't know if the harm to the public is going to  
23 continue, or the harm to the system, and there is harm to the  
24 system. The Federal Trade Commission has a statutory  
25 obligation to do certain things, but I don't think that



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1 anything after what's been filed here and what we've heard here  
2 in open court and what we see in the orders and what we've seen  
3 in the affidavits and we've seen in the statistics and we've  
4 seen in the report of the receiver, that it's likely at all  
5 that anything that may have been done -- and I'm not saying  
6 there was anything done at all. I have no idea. I'm not here  
7 to do the facts. The jury will tell us what the facts are, but  
8 I don't think there's any -- any chance of anything to continue  
9 with all the eyes and ears that are going to be on this case.

10 The equitable balances, I mean, I think that, again, the  
11 equitable balance is very strong on the Government because  
12 that's their duty and they are out there to protect certain  
13 things that no one else can do but the Government. But, again,  
14 the equities of the defense also have equities, and their  
15 equities are that they have a business. If it's run illegally,  
16 as I indicated before, it's not going to be from this day  
17 forward, for sure, because there's a lot of eyes and ears on  
18 that business, and in the public interest -- and I think the  
19 public interest -- we always talk about the public interest.  
20 The public interest, yes, is usually, you know, the enforcement  
21 of regulations and laws and making sure that that which is  
22 alleged in this complaint does not happen. But we also have a  
23 public interest of promoting entrepreneurial endeavors and we  
24 have public interest in allowing people to conduct their  
25 business in a lawful manner. And, again, I say lawful, because

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1 I'm not saying this was unusual or anything else, but, again, I  
2 presume it's going to be totally lawful after today because  
3 everyone's going to be watching. And I'm not saying that  
4 anything happened before.

5 So I think the solution is to convert the receiver to a  
6 monitor, and I'm going to appoint the receiver as a monitor so  
7 that we have a situation where, as I indicated, we know that  
8 both sides are adequately protected -- and I said both sides  
9 have to be protected -- and I think that the receiver -- and I  
10 compliment Mr. Miles. I think he did a lot of work and his  
11 staff did a lot of work, and I think he'll be an excellent  
12 monitor because now he knows everything about it and he's had  
13 experts with him and so I am going to appoint him as a monitor.  
14 And we can talk about what a monitor's obligation or, you  
15 know -- but I think we all know it's monitored to make sure  
16 that the businesses are being conducted according to the law,  
17 that he may speak to each side ex parte, he may, you know,  
18 gather you together to speak and so forth.

19 And if you want to try between yourselves putting together  
20 an order, that's fine; if not, we'll put together an order.  
21 But the reason for the monitor is two-fold: No. 1, to satisfy  
22 the obligation to the Court under the injunctive relief to  
23 satisfy -- to protect the public and to protect -- when I say  
24 "the public," the defendants are public too, so both sides. I  
25 think it's one of those win/win situations. And so I will

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1 appoint him there. That -- his fee will -- if there's money in  
2 the pot, so to speak, his fee will come out of that. If  
3 there's no money in the pot, then the plaintiffs and defendants  
4 will split his fee, but from what I've read, there's some money  
5 in the pot, so I don't think it's going to be a problem.

6 Mr. Miles, are you willing to accept as the monitor?

7 **MR. MILES:** Your Honor, I am.

8 **THE COURT:** Okay.

9 **MR. MILES:** I have experience being a monitor.

10 **THE COURT:** That's even better.

11 **MR. MILES:** I understand my role perfectly well. And  
12 when I was U.S. Attorney, I appointed monitors.

13 **THE COURT:** That's right. I forgot. That's right.  
14 So we have a perfect candidate.

15 And your report was excellent.

16 **MR. MILES:** Thank you, your Honor.

17 **THE COURT:** So, Mr. Epstein?

18 **MR. EPSTEIN:** Defendants are fine with that, your  
19 Honor. I suggest, since we've all done this before, that we  
20 have a meet and confer amongst the three of us, of our group  
21 and the FTC, come up with the terms of the monitorship order.  
22 I think we can do that.

23 **THE COURT:** Good. And Mr. Miles, I'm sure, has a lot  
24 of experience in doing this, so why don't you do that. Let's  
25 say within the next 10 days, that should -- we have the holiday

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1 coming, so let's say two weeks, because I know we're closed  
2 tomorrow and so -- within two weeks present an order, but  
3 Mr. Miles may continue as he's doing now but as a monitor,  
4 so --

5 **MR. EPSTEIN:** All right. So as of today on the basis  
6 of the order, he's now been denoted as the monitor so that the  
7 parties can then retake possession --

8 **THE COURT:** Yes.

9 **MR. EPSTEIN:** -- of business in his oversight.

10 **THE COURT:** Yeah. He'll -- he's the monitor, so you  
11 can't just all of a sudden he'll tell you how to do it. And  
12 you guys will figure it out. And the temporary restraining  
13 order is -- it expires today, anyhow.

14 **MR. EPSTEIN:** Yeah, I just wanted to make sure, as of  
15 today, the transition will occur as of today, even in the  
16 absence of the written order based on the oral order that you  
17 made today?

18 **THE COURT:** Yes.

19 **MR. EPSTEIN:** Thank you.

20 **THE COURT:** Tomorrow, you know, commerce is closed,  
21 so it'll take two weeks to get everything organized. Okay?

22 And then we have not done a scheduling conference, and we  
23 can do that -- I wanted this in person. We can do that by  
24 Zoom. And I'll -- maybe you can put together -- you guys know  
25 more about the Rule 26, and now I like to do scheduling

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1 conferences in person because I like to see the people, but  
2 I've seen everybody today and I'm glad to have seen you.

3 Yes.

4 **MR. MILES:** Your honor, just to clarify on the point  
5 that counsel just made about effectiveness of the transition,  
6 because, as a receiver, we took control of the company,  
7 obviously, and all of its assets and accounts.

8 **THE COURT:** Right. It'll take you a while to --

9 **MR. MILES:** Right.

10 **THE COURT:** That's why I said within the two weeks --  
11 you're still the receiver until we get the monitor in place,  
12 because otherwise things would be crazy. You'll notify the  
13 banks and each side and so forth.

14 **MR. MILES:** Thanks for that clarification, your  
15 Honor.

16 **MR. EPSTEIN:** What's going to be -- presumably -- you  
17 haven't said it out loud yet, but presumably, the motion to  
18 convert to a preliminary injunction is denied in part, granted  
19 in part to appoint the monitor, but the injunctive  
20 provisions -- there's two parts of it, the injunctive  
21 provisions and the asset freeze that you have not addressed.  
22 Can we assume --

23 **THE COURT:** Those also, as of today, are subject to  
24 the receiver doing it in an orderly fashion. That's why I'm  
25 saying, it's as of today, but the receiver has jurisdiction to

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1 do it, so it make take two weeks to do it. I'm not -- you  
2 know, I don't want somebody running to the bank and say -- you  
3 know, the receiver will do it. He'll contact the bank. He'll  
4 do all the things that are necessary to unwind the temporary  
5 restraining order as of today. That means, like, if there's an  
6 obligation or something that's next week and he hasn't had a  
7 chance to do it, it's still the obligation. I can't think  
8 exactly of all the things, but it can't happen all of a sudden;  
9 it's going to take --

10 **MR. EPSTEIN:** No question there's going to be some  
11 time involved, because mechanically in order to free up  
12 accounts, things like that, we're going to need your order.

13 **THE COURT:** I know. And also we're going to need the  
14 receiver, now the monitor, to facilitate it.

15 **MR. EPSTEIN:** And that's as to the companies, but as  
16 to the individuals --

17 **THE COURT:** Individuals, all you need is my order.

18 **MR. EPSTEIN:** Yeah, we just need your order.

19 **THE COURT:** And as soon as we get the order, we'll  
20 sign it.

21 Anything else?

22 Okay, let's do a Zoom scheduling conference. I think it's  
23 better. Why don't you guys meet and confer, do all the things  
24 in 26, see how much time you need for certain things, you know,  
25 and then we can talk about it.

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1           **MR. EPSTEIN:** I'm about to embarrass myself because I  
2 normally do this right first thing or have my trusty associate  
3 do it, but we didn't check your website. Do you have a form of  
4 a case management report or Rule 26(f) order --

5           **THE COURT:** We do.

6           **MR. EPSTEIN:** -- that you prefer?

7           **THE COURT:** It's on there. As I say, often do them,  
8 anyhow, because I like to see who we're doing it with. Here we  
9 may not need a meeting together. You guys can put it together.  
10 Oftentimes I'm asked, how much time can we have? I say, take  
11 as much time as you need, but once we get dates, I don't  
12 adjourn them because I don't have a trailing docket. You know,  
13 allow time in there for discovery and vacations and your family  
14 and all that stuff, because once we get discovery over, we'll  
15 give you a date, a motion cutoff date, and at the same time  
16 you'll get a pretrial conference for the trial and a trial  
17 date, and our trial dates, those are them. Sometimes we're off  
18 a day, maybe two days, but I used to hate trailing dockets.  
19 You tell the client, hey, we're going to trial on a certain  
20 date, maybe. You know, you get all your witnesses lined up.  
21 So we give definite dates. It's good for the attorneys. And  
22 my wife calls them spending dates because I have two weeks free  
23 because we thought -- you know, it settled and we couldn't  
24 finish it up so we'll go shopping and have a good time,  
25 so . . .

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1           Okay. Oh, and the other thing is, any time that you have  
2 something you want to talk to me about, I'm always willing to  
3 take a phone call or Zoom. Rather than you spend a whole lot  
4 of money and time filing motions or, you know -- and I assume  
5 you guys -- guys and ladies -- are going to get along. You  
6 know, civility in practice is important. You know, sometimes  
7 you make a phone call, we'll talk about it and you solve it.  
8 If it's something you can't solve, you know, rather than  
9 spending time on filing motions, if I'm here, we'll talk about  
10 them. I want to save as much time and money for everybody and  
11 then we'll go from there. Anything you need, though, before  
12 you start filing motions and stuff, call here and we'll --

13           **MR. EPSTEIN:** Is there any particular format you have  
14 for discovery motions? Do you like a pre-motion --

15           **THE COURT:** No, no. I'm not like New York.

16           **MR. EPSTEIN:** -- anything like that?

17           **THE COURT:** No. In fact, we have a case in New York.  
18 We have to --

19           **MR. EPSTEIN:** New York -- lots of places --  
20 California.

21           **THE COURT:** Yeah. I mean, I didn't know California,  
22 but, you know, they -- you got to look at it before it can be  
23 filed and, no, we don't do that.

24           Okay. Thank you very much. Stay safe that's the most  
25 important thing.



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**MR. EPSTEIN:** Thank you, your Honor.

**THE COURT:** Thank you.

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**C E R T I F I C A T I O N**

I certify that the foregoing is a correct transcription of  
the record of proceedings in the above-entitled matter.

s/ Timothy M. Flourney, CSR-5780  
Timothy M. Flourney, CSR-5780  
Official Court Reporter

7/6/2022  
Date

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